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Craig Engle

Partner

202.775.5791 DIRECT

202.857.6395 FAX

engle.craig@arentfox.com

Brett G. Kappel

Counsel

202.857.6494 DIRECT

202.857.6395 FAX

kappel.brett@arentfox.com

June 20, 2012

BY HAND DELIVERY

Thomas Hintermister
Assistant Staff Director, Audit Division
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Reference Number
032567.00001

Re: Response to Draft Final Audit Report on Rightmarch.com PAC, Inc.

Dear Mr. Hintermister:

On May 18, 2012, the Audit Division of the Federal Election Commission ("FEC" or "the Commission") issued a Draft Final Audit Report ("DFAR") on Rightmarch.com PAC, Inc. ("Rightmarch") covering the period from January 1, 2007 through December 31, 2008. The Commission requested that Rightmarch respond to the DFAR by June 5, 2012. On June 4, 2012, Rightmarch requested and the Commission granted a seven-day extension until June 5, 2012 so Rightmarch could respond to the findings and recommendations of the DFAR.

The Audit Division made three findings and recommendations with regard to Rightmarch. First, the Audit Division found that Rightmarch misstated its financial activity in both 2007 and 2008. DFAR at 4-6. Second, the Audit Division determined that a campaign vendor had not extended credit to Rightmarch outside of its normal course of business. DFAR at 6-12. Inexplicably, however, the Audit Division then concluded that Rightmarch must nevertheless amend its reports for 2007 and 2008 to report as debts potential fees and expenses that Rightmarch may, *at some future point*, owe to the vendor. DFAR at 12. Finally, the Audit Division found that Rightmarch did not properly disclose independent expenditures during the audit period. DFAR at 12-16.

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As the Audit Division reported, Rightmarch, in its response to the Interim Audit Report, concurred with the Audit Division's finding that Rightmarch misstated its financial activity in 2007 and 2008 and will work with the Audit Division to amend its disclosure reports appropriately. (DFAR at 4).

Rightmarch is pleased that the Audit Division has concluded that, based on Rightmarch's response to the Interim Audit Report, the commercial vendor that the committee used for fundraising services did not make an impermissible extension of credit to Rightmarch. DFAR at 6-12. Rightmarch is mystified, however, by the Audit Division's conclusion that the "fees and expenses listed on the weekly invoices . . . are debts subject to the reporting requirements of 11 C.F.R. § 104.11." DFAR at 12. As we explained in both our Request for Consideration of Legal Questions Arising in the Audit of Rightmarch.com PAC, Inc. (pages 4-6) and our Response to Interim Audit Report of the Audit Division on Rightmarch.com PAC, Inc. (pages 3-4), the "fees and expenses listed on the weekly invoices" do not constitute debts pursuant to 2 U.S.C. § 438(b)(8) and 11 C.F.R. § 104.11. The fees and expenses referred to by the Audit Division only become due and payable if certain events were to occur in the future, i.e., Rightmarch were to terminate the contract or the vendor were to exceed fundraising expectations. Accordingly, the "fees and expenses listed on the weekly invoices" are, at best, contingent liabilities. We are not aware of any instance in which the Commission has held that a committee must report contingent liabilities as debts under 2 U.S.C. § 438(b)(8) and 11 C.F.R. § 104.11.

Rightmarch is disappointed that the Audit Division reiterated its findings from the Interim Audit Report that Rightmarch failed to file 24- and 48-hour reports for certain independent expenditures and did not properly disclose independent expenditures on Schedule E. DFAR at 12-16. Rightmarch disputed this issue with Audit Division staff during audit fieldwork and at the exit conference. Following the exit conference, Rightmarch filed its Request for Early Consideration of Legal Questions asking the Commission whether the fundraising scripts utilized by Rightmarch's fundraising vendor constituted independent expenditures. 2 U.S.C. § 431(i7). After considering the recommendations of the Office of General Counsel, the Commission was unable to reach a conclusion with regard to this question by the requisite four votes.

There has been no change in the law defining independent expenditures since the Commission responded to our Request for Early Consideration of Legal Questions on April 5, 2011. Accordingly, Rightmarch objects to this issue being included in the Audit Report as a finding of the Commission. Instead, Rightmarch requests that the DFAR be revised to move the discussion regarding Rightmarch's alleged failure to report independent expenditures to an Additional

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Issues section at the end of the Audit Report. See, e.g., Final Audit Report of the Commission on SEIU COPE at 4-5 (October 31, 2011)(discussing the Commission's failure to adopt a recommendation regarding the reporting of independent expenditures in the form of payments to individuals for door-to-door voter ID and get-out-the-vote efforts.)

Sincerely,



Craig Engle



Brett G. Kappel